

time of application is not to be construed as a determination of a producer's eligibility.

(h) Producers who apply are required to retain documentation in support of their application for three years after the date of application in accordance with § 760.713.

(i) The application submitted in accordance with this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the producer has submitted all the required forms. In addition to the completed, certified application form, if the information for the following forms or certifications is not on file in the FSA county office or is not current for 2009, the producer must also submit:

- (1) Farm operating plan for individual or legal entity;
- (2) Average adjusted gross income statement for 2009; and
- (3) Highly erodible land conservation (HELC) and wetland conservation certification.

(j) Application approval and payment by FSA does not relieve a producer from having to submit any form, records, or documentation required, but not filed at the time of application or payment, according to paragraph (h) of this section.

§ 760.705 Payment rates and calculation of payments.

(a) CAP payments will be calculated by multiplying the total number of reported or determined acres of an eligible crop by the per acre payment rate for that crop. Payment rates are as follows:

- (1) Long grain rice, \$31.93 per acre;
- (2) Medium or short grain rice, \$52.46 per acre;
- (3) Upland cotton, \$17.70 per acre;
- (4) Soybeans, \$15.62 per acre; and
- (5) Sweet potatoes, \$155.41 per acre.

(b) Payments will be calculated based on the 2009 crop year reported or determined planted or considered planted acres of an eligible crop on a farm in a disaster county as reflected on a form FSA-578, Report of Acreage, on file in FSA as of October 22, 2010.

§ 760.706 Availability of funds.

(a) Payments specified in this subpart are subject to the availability of funds. The total available program funds are \$550 million. In order to keep payments within available funds, the Deputy Administrator may pro-rate payments, to the extent the Deputy Administrator determines that necessary.

(b) Funds for CAP are being made available only for the 2009 crop year reported and determined eligible crop acreage in disaster counties as reflected on a form FSA-578, Report of Acreage, as of October 22, 2010.

§ 760.707 Proof of loss.

(a) All certifications, applications, and documentation are subject to spot check and verification by FSA. Producers must submit documentation to FSA if and when FSA requests documentation to substantiate any certified application.

(b) Producers are responsible for retaining or providing, when required, verifiable or reliable production or loss records available for the crop. Producers are also responsible for summarizing all the production or loss evidence and providing the information in a manner that can be understood by the county committee.

(c) Any producer receiving payment under this subpart agrees to maintain any books, records, and accounts supporting any information or certification made according to this part for 3 years after the end of the year following application.

(d) Producers receiving payments or any other person who furnishes such information to FSA must permit FSA or authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books, records or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 760.708 Miscellaneous provisions and limitations.

(a) A person ineligible under §1437.15(c) of this title concerning violations of the Noninsured Crop Disaster Assistance Program for the 2009 crop

year is ineligible for benefits under this subpart.

(b) A person ineligible under § 400.458 of this title for the 2009 crop year concerning violations of crop insurance regulations is ineligible for CAP.

(c) In the event that any request for CAP payment resulted from erroneous information or a miscalculation, the payment will be recalculated and the producer must refund any excess to FSA with interest to be calculated from the date of the disbursement to the producer. If for whatever reason the producer signing a CAP application overstates the loss level of the crop when the actual loss level determined by FSA for the crop is less than the level claimed, or where the CAP payment would exceed the producer's actual loss, the application will be disapproved for the crop and the full CAP payment for that crop will be required to be refunded with interest from date of disbursement. The CAP payment cannot exceed the producer's actual loss.

(d) The liability of anyone for any penalty or sanction under or in connection with this subpart, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(e) The regulations in parts 11 and 780 of this title apply to determinations under this subpart.

(f) Any payment to any person under this subpart will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or its proceeds.

(g) Any payment made under this subpart will be considered farm revenue for 2009 for the Supplemental Revenue Assistance Payments Program.

(h) The average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of average adjusted gross income (AGI) apply to each applicant for CAP. Specifically, a person or legal entity with an average adjusted gross non-farm income, as defined in § 1404.3 of

this title, that exceeds \$500,000 is not eligible to receive CAP payments.

(i) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this title may receive, directly or indirectly, more than \$100,000 in payments under this subpart.

(j) The direct attribution provisions in part 1400 of this title apply to CAP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive a CAP payment, then the payment to the actual payee will be reduced commensurately with that interest. For CAP, unless otherwise specified in part 1400 of this title, the AGI amount will be that person's or legal entity's average AGI for the three taxable years that precede the 2008 taxable year (that is 2005, 2006, and 2007).

(k) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), FSA waives the restriction on receipt of funds under CAP but only as to beneficiaries who, as a condition of such waiver, agree to apply the CAP payments to reduce the amount of the judgment lien.

(l) For CAP, producers are either eligible or ineligible. Therefore, the provisions of § 718.304 of this chapter, "Failure to Fully Comply," do not apply to this subpart.

(m) The regulations in subpart B apply to CAP. In addition to those regulations that specifically include subpart H or apply to this part, the following sections specifically apply to this subpart: §§ 760.113(a), 760.114, and 760.116(a).